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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,285	07/10/2007	Peter Wiedemann	DAY1132995	9873
26389 7590 08/05/2010 CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC 1420 FIFTH AVENUE SUITE 2800 SEATTLE, WA 98101-2347				
EXAMINER				
TRAN, THIEN S				
ART UNIT		PAPER NUMBER		
3742				
NOTIFICATION DATE		DELIVERY MODE		
08/05/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

efiling@cojk.com

Office Action Summary

Application No.

10/585,285

Applicant(s)

WIEDEMANN ET AL.

Examiner

THIEN TRAN

Art Unit

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,19-22 and 24-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,19-22 and 24-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claims 1, 4, 19, 21, 23, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Juergen (DE 19832757) in view of Wolfgang (DE 19830844).
 4. Regarding claim 1, Juergen teaches a cooking device (Pg 1, Pgh 1, Line 1, control a cooking device), comprising: at least one cooking parameter (Pg 5, Pgh 5, change the program parameter & Pg 7, Pgh 2) adapted to be preset for at least one of a predetermined cooking program (Pg 5, Pgh 5, pre-set operating program), and a predetermined cooking mode of operation (Pg 6, Pgh 1, pre-set operating procedure), the parameter reflecting at least one of a particular geographic location of the cooking device and a selectable operating language (Pg 4, Pgh 1, convert the terms into another language) of the cooking device; and a control element (Fig 1, Items 50 & 60, Pg 8, Pgh 2, operating unit and control device) including at least one modification function element

(Fig 1, Items 20 & 23, Pg 9, Pgh 1, input operating elements) and at least one confirmation and/or storage function element (Fig 1, Item 50, Pg 9, Pgh 3, memory for storing program parameters), the modification function element being operable to modify the preset cooking parameter (Pg 6, Pgh 4); and the confirmation and/or storage function element being operable to confirm, accept and/or store the modified cooking parameter (Pg 5, Pgh 5, Pgh 6, Pgh 1 & 4) after a predetermined time period lapses (Pg 4, Pgh 3 & 4, automatically started after a predetermined time & Pg 7, Pgh 1). Juergen discloses the claimed invention except for where the cooking parameter is automatically preset as a function of the location of the cooking device and/or as a function of a selected operating language of the cooking device.

5. In analogous art of control arrangement for a program-controlled domestic appliance with country program list, Wolfgang discloses where the cooking parameter is automatically preset as a function of the location of the cooking device (Pg 2, Pgh 1, Lines 1-4) and/or as a function of a selected operating language of the cooking device (Pg 2, Pgh 1, Lines 1-4) for the benefit of taking into consideration country-specific cooking and food patterns (Pg 2, Pgh 1). It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the teachings Juergen with the location system of Wolfgang for the benefit of taking into consideration country-specific cooking and food patterns.

6. Regarding claim 4, Juergen teaches comprising predetermined unchangeable limits within which the at least on modification function element is configured to modify the cooking parameter (Pg 5, Pgh 5, device is set in operation with a pre-set operating

program, the user can still adapt or change the program parameters by actuating the function operating elements).

7. Regarding claim 19, Juergen teaches where the control element (Fig 1, Items 50 & 60, Pg 8, Pgh 2, operating unit and control device) is configured to preset all of the cooking parameters (Pg 5, Pgh 5, device is set in operation with a pre-set operating program). Juergen discloses the claimed invention except for where the control element is configured to preset the cooking parameters as a function of the location of the cooking device and/or the selected operating language of the cooking device. In analogous art of control arrangement for a program-controlled domestic appliance with country program list, Wolfgang discloses where the control element (Fig 1, Item 1, Pg 2, Pgh 8, control unit) is configured to preset the cooking parameters as a function of the location of the cooking device and/or the selected operating language of the cooking device (Pg 1, Pgh 4 & Pg 2, Pgh 1) for the benefit of taking into consideration country-specific cooking and food patterns (Pg 2, Pgh 1). It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the teachings Juergen with the location system of Wolfgang for the benefit of taking into consideration country-specific cooking and food patterns.

8. Regarding claim 21, Juergen teaches where the predetermined unchangeable limits are preset (Pg 5, Pgh 5, device is set in operation with a pre-set operating program, the user can still adapt or change the program parameters by actuating the function operating elements). Juegen discloses the claimed invention except for where the limits are preset based on the location of the cooking device and/or the selected

operating language. In analogous art of control arrangement for a program-controlled domestic appliance with country program list, Wolfgang discloses where the limits are preset based on the location of the cooking device and/or the selected operating language (Pg 1, Pgh 4 & Pg 2, Pgh 1) for the benefit of taking into consideration country-specific cooking and food patterns (Pg 2, Pgh 1). It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the teachings Juergen with the location system of Wolfgang for the benefit of taking into consideration country-specific cooking and food patterns.

9. Regarding claim 23, Juergen teaches where the control element (Fig 1, Items 50 & 60, Pg 8, Pgh 2, operating unit and control device) presets the parameter based on the selectable operating language (Pg 4, Pgh 1, convert the terms into another language). Juergen discloses the claimed invention except for where the control element presets the parameter based on at least one of the locating system. In analogous art of control arrangement for a program-controlled domestic appliance with country program list, Wolfgang discloses where the control element presets the parameter based on at least one of the locating system (Fig 1, Items 1, 9, & 20, Pg 2, Pgh 8, country numbers) for the benefit of taking into consideration country-specific cooking and food patterns (Pg 2, Pgh 1). It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the teachings Juergen with the location system of Wolfgang for the benefit of taking into consideration country-specific cooking and food patterns.

10. Regarding claim 26, Juergen teaches where the geographic location of the cooking device is a country-specific location. The examiner interprets that it is inherent that the geographic location of the cooking device is a country-specific location. If the location of the cooking device is located in the US, then the device is specific to the US. If the location of the cooking device is located in Germany, then the device is specific to the Germany.

11. Regarding claim 27, Juergen teaches where the confirmation and/or storage function element (Fig 1, Item 50, Pg 9, Pgh 3, memory for storing program parameters) is operable to automatically confirm, accept and/or store the modified cooking parameter (Pg 5, Pgh 5 & Pg 6, Pgh 1 & Pg 4) after the predetermined time period lapses (Pg 4, Pgh 3 & 4, automatically started after a predetermined time & Pg 7, Pgh 1).

12. Claims 2 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Juergen (DE 19832757) in view of Wolfgang (DE 19830844) as applied to claim 1, further in view of Belt (US Patent 6,193,422).

13. Regarding claim 2, Juergen in view of Wolfgang discloses the claimed invention except for where the control element can adjust the predetermine time period. In analogous art of implementation of idle mode in a suspend/resume microprocessor system, Belt discloses where the control element (Fig 1, Item 11, Col 3, Lines 2-14) can adjust the predetermine time period (Col 3, Lines 9-14 & Col 5, Lines 10-20) for the benefit of operating the system with certain power savings factors (Col 5, Lines 30-35). It would have been obvious to one having ordinary skill in the art at the time of the

invention to combine the teachings of Juergen and Wolfgang with the adjustable delay of Belt for the benefit of operating the system with certain power savings factors.

Examiner interprets that because the idle time of Belt can be set to 8 seconds, the timer can also be adjusted to a different time value.

14. Regarding claim 20, Juergen teaches a predetermined time period (Pg 4, Pgh 3 & 4, automatically started after a predetermined time). Juegen in view of Wolfgang discloses the claimed invention except for where the predetermined time period is approximately one second to approximately thirty seconds after the last activation of the control element. In analogous art of implementation of idle mode in a suspend/resume microprocessor system, Belt discloses where the predetermined time period is approximately one second to approximately thirty seconds after the last activation of the control element (Col 5, Lines 10-20, preset for idle timer is 8 seconds) for the benefit of operating the system with certain power savings factors (Col 5, Lines 30-35). It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the teachings of Juergen and Wolfgang with the delay of Belt for the benefit of operating the system with certain power savings factors.

15. Claims 22, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Juergen (DE 19832757) in view of Wolfgang (DE 19830844) as applied to claims 1 and 22, further in view of Yasuda (US 2004/0135701).

16. Regarding claim 22, Juergen in view of Wolfgang discloses the claimed invention except for where the locating system is configured to automatically detect the location of the cooking device. In analogous art of apparatus operation system, Yasuda discloses

where the locating system (Fig 1, Item 44, Pg 5, 0060) is configured to automatically detect the location (Pg 5, 0060, the location-related information may be automatically acquired by the location acquisition means such as a GPS) of the cooking device (Pg 6, 0064, microwave oven) for the benefit of determining the location of the device (Pg 5, 0060). It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the teachings of Juergen and Wolfgang with the locating system of Yasuda for the benefit of determining the location of the device.

17. Regarding claim 24, Juergen teaches where the control element (Fig 1, Items 50 & 60, Pg 8, Pgh 2, operating unit and control device) is configured to automatically preset the cooking parameters (Pg 5, Pgh 5, device is set in operation with a pre-set operating program). Juergen discloses the claimed invention except for where the control element is configured to preset the cooking parameters as a function of the location detected by the locating system. In analogous art of control arrangement for a program-controlled domestic appliance with country program list, Wolfgang discloses where the control element (Fig 1, Item 1, Pg 2, Pgh 8, control unit) is configured to preset the cooking parameters as a function of the location detected by the locating system (Fig 1, Items 1, 9, & 20, Pg 2, Pgh 8, country numbers) for the benefit of taking into consideration country-specific cooking and food patterns (Pg 2, Pgh 1). It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the teachings Juergen with the location system of Wolfgang for the benefit of taking into consideration country-specific cooking and food patterns.

18. Regarding claim 25, Juergen teaches further comprising a control and/or regulating unit (Fig 1, Items 50 & 60, Pg 8, Pgh 2, operating unit and control device) in working connection with at least one of the modification function element (Fig 1, Items 20 & 23, Pg 9, Pgh 1, input operating elements), the confirmation and/or storage function element (Fig 1, Item 50, Pg 9, Pgh 3, memory for storing program parameters). Juergen discloses the claimed invention except for where the control and/or regulating unit is in working connection with the locating system. In analogous art of control arrangement for a program-controlled domestic appliance with country program list, Wolfgang discloses where the control and/or regulating unit (Fig 1, Item 1, Pg 2, Pgh 8, control unit) is in working connection with the locating system (Fig 1, Items 1, 9, & 20, Pg 2, Pgh 8, country numbers) for the benefit of taking into consideration country-specific cooking and food patterns (Pg 2, Pgh 1). It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the teachings Juergen with the location system of Wolfgang for the benefit of taking into consideration country-specific cooking and food patterns.

Response to Amendment

19. Claims 3, 5-18 and 23 have been cancelled.
20. Claims 24-27 are new.
21. Claims 1, 2, 4, 19, 21 and 22 have been amended.
22. Claims 1, 2, 4, 19-22 and 24-27 are pending.

Response to Arguments

23. Applicant's arguments filed on 5/12/2010 with respect to claims 1, 2, 4, 19-22 and 24-27 have been fully considered but they are not persuasive.

24. Regarding the Remarks about claims 1 and 4 on pages 6-7 and Juergen not teaching "the cooking parameter is automatically preset as a function of the location of the cooking device and/or as a function of a selected operating language of the cooking device" the examiner agrees. But Juergen in view of Wolfgang discloses the amended claimed limitation, see claim rejections of 1 and 4 above for details.

25. Regarding the Remarks about claims 19, 21 and 22 on pages 8-9 and Wolfgang "has nothing to do with presetting a cooking parameter of a cooking device as a function of the location and/or operating language of the cooking device", the examiner disagrees. Wolfgang is directed to a device and method of controlling a cooking device with specific cooking instructions (cooking recipe) based on the location or the operating language of the cooking device (Pg 1, Pgh 1, Summary & Pg 2, Pgh 1). The cooking recipe of Wolfgang is chosen for a specific country (Pg 1, Pgh 2, Germany or Turkey), the recipe instructs the cooking device with a preset cooking parameter (recipe contains time and temperature information) to cook the desired food (Pg 2, Pgh 8, control date, like for example the used heating elements, oven temperature, or the time of cooking of a special cooking method or program stored in table form). The combination of Juergen and Wolfgang is appropriate because they are both analogous art in the field of method of controlling food cooking devices and supported by the following case law and KSR ruling.

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. *Id.* See MPEP § 2141.

The U.S. Supreme Court supplied seven rationales in *KSR International v. Teleflex Inc.* (550 USPQ2d 1385) that, by following the factual inquiries set forth in *Graham v. John Deere Co.* (383 U.S. 1, 148 USPQ 459 (1966)), establish a *prima facie* case of obviousness. The rationales are:

- (a) Combining prior art elements according to known methods to yield predictable results;
- (b) Simple substitution of one known element for another to obtain predictable results;
- (c) Use of a known technique to improve similar devices, methods, or products in the same way;
- (d) Applying a known technique to a known device, method, or product ready for improvement to yield predictable results;
- (e) "Obvious to try" - choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;
- (f) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art;
- (g) Some teaching, suggestion, or motivation to combine prior art references that would have led one of ordinary skill to modify the prior reference teachings to arrive at the claimed invention.

The Examiner notes that above rationales are merely exemplary. For more information, see MPEP § 2141.

26. Furthermore, because Juergen in view of Wolfgang teaches the structural limitations of claims 1, 4, 19, 21, 23, 26 and 26, it meets the limitations of the claim, see claim rejections above for details.

27. The manner of operating the device does not differentiate an apparatus claim from the prior art. A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

28. While intended use recitations and other types of functional language cannot be entirely disregarded. However, in apparatus, article, and composition claims, intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. In re Casey, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); In re Otto, 312 F.2d 937, 938, 136 USPQ 458, 459 (CCPA 1963).

29. Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). See also MPEP § 2114.

30. Regarding the Remarks about amended claim 22 on page 10, and Wolfgang not teaching "a locating system for automatically detecting the location of the cooking device" the examiner agrees. But Juergen in view of Wolfgang further in view of Yasuda discloses the claimed limitation. See claim rejection of 22 above for details.

31. Regarding the Remarks about new claims 24-26 being patentable over Juergen and Wolfgang, the examiner disagrees. See claim rejections of claims 24-26 for details.

32. Regarding the Remarks about claims 2 and 20 on pages 11-12 and the improper combination of Juergen in view of Belt, the examiner disagrees. Both Juergen and Belt are directed to using a controller to control a timing of a display device. Furthermore, Belt teaches where after a specific amount of idle time, the display is turned off to conserve energy (Col 5, Lines 30-37 & Lines 45-47). It would have been obvious to one

having ordinary skill in the art at the time of the invention to combine the teachings of Juergen with the time control of Belt for the benefit of conserving energy. The combination of Juergen and Belt is further supported by the case law and KSR ruling in paragraph 25 above.

Conclusion

33. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to THIEN TRAN whose telephone number is (571)270-7745. The examiner can normally be reached on Mon-Thurs, 8-5PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner, Art Unit 3742
7/27/2010
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